IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 544 OF 2003.

Shri Umesh K. Salgaonker,
trading in the name
and style of Super
Construction from
Driver Hill, Vasco-da-Gama,
Goa. ... Petitioner.

VERSUS

1. Airports Authority
of India,
C/o. Airport Director,
AA1, Goa Airport,
Vasco-da-Gama, Goa.

2. The Airport Director,
Civil Enclave,
Goa Airport,
Vasco-da-Gama, Goa. ... Respondents.

Mr. S.K. Kakodkar, Senior Advocate with Mr. J. de Souza, Advocate for the Petitioner.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras de Sa, Advocate for the Respondents.

CORAM: A.M. KHANWILKAR &
P.V. HARDAS, JJ.

DATE: 12TH NOVEMBER, 2003.

ORAL ORDER: **(PER KHANWILKAR, J.)**

Leave to amend prayer clause paragraph 12 granted. Amendment be carried out forthwith.

2. By this Writ Petition under Article 226 of the Constitution of India the petitioner prays for direction against the respondents to forthwith issue to the petitioner the tender documents to enable the

petitioner to participate in the tender process as advertised on 15th October, 2003.

3. The principal grievance made in this petition is that the notice published in the Navhind Times dated October 15, 2003 inviting tenders for the facility of management of car parking at Goa Airport was vague – as it did not specify the period during which the sale of tender was to take place. According to the petitioner the petitioner was misled on account of such vagueness in the notice. It is contended that although the petitioner was otherwise eligible in all respects, the authorities have refused to issue tender documents to the petitioner on 10th November, 2003, when the petitioner had approached the authorities and asked for tender documents on the basis of his application dated 17th October, 2003, so as to be able to submit his tender on 13th November, 2003, which was the last date of receipt of duly completed tender forms, as notified in the notice published in Navhind Times referred to above. The petitioner submits that such refusal clearly infracts Article 14 of the Constitution of India for which reason appropriate directions be issued by this Court.

4. In response the respondents have filed an affidavit clearly pointing out that the notice which

was published in the Navhind Times dated October 15, 2003 was only an abridged notice informing the public that, for detailed information and further eligibility criteria, they should contact the concerned Officer or visit the authorities website which has been mentioned in the notice itself. It is stated on affidavit that detailed noticed inviting tender providing for all the relevant dates and steps to be taken including the eligibility criteria have been notified on the stated websites by the respondents and which was accessible to the public. As per the said notice, sale of tender has been specifically restricted between 3rd November, 2003 to 5th November, 2003, whereas the petitioner is wrong in making grievance about the refusal as the petitioner had approached after that date. The affidavit-in-reply also asserts that, in fact, the petitioner had deputed messenger in the office of the Assistant Manager on 5th November, 2003 which was the last date for sale of tender who, in turn, had requested for issuance of tender papers, when he was informed that the tender forms cannot be sold or issued to the petitioner since the petitioner had not filed a declaration on non-judicial stamp paper of Rs.10/-, which was one of the pre-conditions for issuance of tender documents as per the notice already published. The petitioner has no doubt filed rejoinder, but has merely denied the said assertion

made by the respondents on affidavit which assertion is also supported by the affidavit of the concerned Assistant Manager.

5. In our view, there is no reason to doubt the statement made on affidavit by the respondents in the above terms. In any case, we find no substance in the grievance made on behalf of the petitioner about the vagueness of the notice issued in the Navhind Times dated October 15, 2003. On proper reading of the said notice it has been made more than clear that for detailed information and further eligibility criteria, the party should contact the Office of the Airport Director or visit the respondents' website, details whereof have been provided in the notice itself. It was therefore expected of the petitioner to diligently access the websites of the respondents to find out further details so as to ensure that all the conditions are fulfilled by him, in the event he was keen on participating in the tender process. The website notice inviting tender is also placed on record which clearly specifies the period between which sale of tender would be permitted i.e. between 3rd November, 2003 to 5th November, 2003. In our view, there is substance in the argument canvassed on behalf of the respondents that notice published in Navhind Times on October 15, 2003 was an abridged

notice only to facilitate giving wide publicity about the proposed tender process. There is no substance in the grievance made on behalf of the petitioner that the notice as issued could have misled the petitioner as such. On the other hand, the petitioner was obliged to contact the Office of the Airport Director or visit the concerned website soon after the publication of the notice in Navhind Times, so as to ascertain further details, information and eligibility criteria, if any. That obviously has not been done by the petitioner, even if we were to accept the stand taken by the petitioner that he contacted the concerned Office only on 10th November, 2003. In fact, as already mentioned above, we are inclined to accept the statement made on affidavit by the Assistant Manager of the respondents that the messenger of the petitioner had contacted him on 5th November, 2003 with the request for issuance of tender papers when he was told that the tender forms cannot be sold or issued to the petitioner since the petitioner had not filed declaration on non-judicial stamp paper of Rs.10/- which was pre-condition for issuance of the tender documents. As there has been non-compliance of the said requirement, even for that reason no fault can be found with the authorities in refusing to issue tender documents and especially after the expiry of the specified period for sale of

tender in the notice displayed on the website of the respondents.

6. Counsel for the petitioner has placed reliance on two decisions of the Apex Court reported in **M/s. G. J. Fernandez, v. State of Karnataka and others,** (A.I.R. 1990 S.C., 958), **M/s. Poddar Steel Corporation v. M/s,. Ganesh Engineering Works and others** (A.I.R. 1991 S.C., 1579) and the decision o**f** this Court in **Agrawal Roadlines Pvt. Ltd. v. Indian Oil Corporation Ltd. & others** (2003 (1) Bom. C.R., 495). However, in our opinion, none of these decisions will be of any avail to the petitioner because the period for issuance of sale of tender has been expressly provided in the notice inviting tender displayed on the website of the respondents. As the petitioner failed to avail of that option during the said period, no fault can be found with the refusal by the authorities in issuance of tender documents to the petitioner.

7. Hence no case for interference in the exercise of writ jurisdiction. Dismissed.

A. M. KHANWILKAR, J.

sl. **P. V. HARDAS, J.**